

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 05-54408

JOHN WILSON
and MARY WILSON,

Chapter 7

Judge Thomas J. Tucker

Debtors.

**ORDER DENYING, IN PART, AND GRANTING IN PART,
MIGUEL CARDIN'S AND RAUL MOYO NEGRETE'S "MOTION
FOR EXTENSION OF TIME TO FILE OBJECTION"**

On August 26, 2005, Miguel Cardin and Raul Moyo Negrete, inmates at the Lawrenceville Correctional Center in Sumner, Illinois, filed a "Motion For Extension of Time to File Objection," requesting that the Court (1) grant them an extension of time "to file an objection to the bankruptcy petition"; (2) "waive the filing fees to enable the Plaintiffs to proceed in [an] adversary proceeding" against Debtors; and (3) "order the Clerk of [the] court to send to each of them copies of all papers filed in this case, as well as the necessary forms (i.e., adversary cover sheets; summonses; complaints; etc.) that may be needed for them to vindicate their claims."

The Court construes Mr. Cardin's and Mr. Negrete's "Motion For Extension of Time to File Objection," in part, as a motion to obtain an extension of the time limits (1) under Fed.R.Bankr.P. 4004(a) to file a complaint objecting to discharge under 11 U.S.C. § 727(a); and (2) under Fed.R.Bankr.P. 4007(c) to file a complaint to determine dischargeability of a debt under 11 U.S.C. § 523. A review of the Court record shows that Debtors did not schedule Mr.

Cardin or Mr. Negrete as creditors and that Mr. Cardin and Mr. Negrete are not listed on the matrix. For this reason, the Court will grant an extension of time in favor of Mr. Cardin and Mr. Negrete.

Regarding the waiver of the filing fee for an adversary proceeding, each party filing an adversary proceeding must pay the full filing fee (\$150.00 if filed before September 20, 2005, and \$250.00 if filed on or after September 20, 2005). *See* 28 U.S.C. § 1915(b) (copy attached). Therefore, the court will deny the Movants' request for a waiver of the filing fee.

However, the Court may authorize the commencement of an adversary proceeding by a "prisoner" without the *prepayment* of the filing fee under 28 U.S.C. 1915(a) (copy attached), if after the submission of an "Application to Proceed Without Prepayment of Fees and Affidavit" (form attached), the Court determines that the Applicant is entitled to such relief.

Regarding the request that the Court order the clerk to provide them copies of all documents filed in this case, the Movants have provided no authority for such relief. The Court will deny that request. The Court notes, however, that Movants may file with the Court a request for notices under Fed.R.Bankr.P. 2002(g)(2).

Accordingly,

IT IS ORDERED that Miguel Cardin's and Raul Moyo Negrete's "Motion For Extension of Time to File Objection," is GRANTED, in part, to the extent that it seeks an extension of time to file an adversary complaint objecting to discharge under 11 U.S.C. § 727 and/or to determine the dischargeability of a debt under 11 U.S.C. § 523. The deadlines for Miguel Cardin and Raul Moyo Negrete (1) to file a complaint objecting to discharge under 11 U.S.C. § 727(a); and (2) to file a complaint to determine dischargeability of a debt under 11 U.S.C. § 523, are extended until and including **Tuesday, October 18, 2005**.

IT IS FURTHER ORDERED that except to the extent of the relief granted above, Miguel Cardin's and Raul Moyo Negrete's "Motion For Extension of Time to File Objection," is DENIED

Date: September 12, 2005

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge

cc: Miguel Cardin #23185
Lawrence Correctional Center
R.R.2, Box 31
Sumner, Illinois 62466

Raul Moyo Negrete #R-04443
Lawrence Correctional Center
R.R.2, Box 31
Sumner, Illinois 62466

Sheryl A. Shoebottom
Wendy Turner Lewis, Trustee
Rodney M. Glusac
United States Trustee (via Claretta Evans)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 05-54408

JOHN WILSON
and MARY WILSON,

Chapter 7

Judge Thomas J. Tucker

Debtors.

MIGUEL CARDIN and
RAUL MOYO NEGRETE,

Adv. Pro. No.

Plaintiffs,

v.

JOHN WILSON,

Defendant.

_____/

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF FEES AND AFFIDAVIT**

I, declare that I am the (check appropriate box) ☐ petitioner/plaintiff/movant ☐ other
in the above-entitled proceeding; that in support of my request to proceed without prepayment of
fees or costs under 28 U.S.C. § 1915 I declare that I am unable to pay the costs of these
proceedings and that I am entitled to the relief sought in the complaint/petition/motion.

In support of this application, I answer the following questions under penalty of perjury:

1. Are you currently incarcerated? ☐ Yes ☐ No (If “No,” go to Part 2)

If “Yes,” state the place of your incarceration.

Are you employed at the institution? Do you receive any payment from the
institution?

Attach a ledger sheet from the institution(s) of your incarceration showing at least the past **six** months' transactions.

2. Are you currently employed? ☐ Yes ☐ No
 - a. If the answer is "Yes," state the amount of your take-home salary or wages and pay period and give the name and address of your employer.
 - b. If the answer is "No," state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer.
3. In the past 12 twelve months have you received any money from any of the following sources?
 - a. Business, profession or other self-employment ☐ Yes ☐ No
 - b. Rent payments, interest or dividends ☐ Yes ☐ No
 - c. Pensions, annuities or life insurance payments ☐ Yes ☐ No
 - d. Disability or workers compensation payments ☐ Yes ☐ No
 - e. Gifts or inheritances ☐ Yes ☐ No
 - f. Any other sources ☐ Yes ☐ No

If the answer to any of the above is "Yes," describe, on the following page, each source of money and state the amount received and what you expect you will continue to receive.

4. Do you have **any** cash or checking or savings accounts? ☐ Yes ☐ No
If "Yes," state the total amount.
5. Do you own any real estate, stocks, bonds, securities, other financial instruments, automobiles or any other thing of value? ☐ Yes ☐ No
If "Yes," describe the property and state its value.

6. List the persons who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support.

I declare under penalty of perjury that the above information is true and correct.

Date

Signature of Applicant

NOTICE TO PRISONER: A Prisoner seeking to proceed without prepayment of fees shall submit an affidavit stating all assets. In addition, a prisoner must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

AUTHORIZATION

I authorize any correctional facility in which I am housed to: (1) provide information about my trust fund account to the federal court; and 2) withdraw from my trust fund account and forward to the federal court (a) an initial partial filing fee for this action (20% of the greater of my average monthly deposits or average monthly balance for approximately the past 6 months), and (b) subsequent monthly payments (20% of my previous month's deposits) until I have paid the full filing fee of \$150.00 for this action. I understand that I am obligated to pay the entire filing fee for this action even if (1) the Court dismisses my complaint, or (2) I voluntarily dismiss my case.

Date

Signature of Applicant

CERTIFICATION

I, certify that, on _____, plaintiff had a current spendable balance of \$_____ in his/her trust fund account. I also certify that during the past 6 months, plaintiff's average monthly deposits were \$_____ and plaintiff's average monthly balance was \$_____. Attached is a copy of plaintiff's statement of his/her trust fund account during the past 6 months.

Date

Signature of Applicant

STATEMENT OF FACTS

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include the names of other people, dates, and places involved in the incident. Do not give any legal arguments or cite any cases or statutes. If you intent to allege a number of related claims, number and st forth each claim on blank 8 1/2 x 11 sheets of paper and attach them to the last page of this complaint.

RELIEF

State briefly and exactly what you want the Court to do for you.

I declare under penalty of perjury that the foregoing is true and correct.

Date

Signature of Applicant

§ 1915. Proceedings in forma pauperis

(a)(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of--

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under [section 636\(b\)](#) of this title or under [section 3401\(b\) of title 18, United States Code](#); and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to [section 636\(c\)](#) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that--

(A) the allegation of poverty is untrue; or

(B) the action or appeal--

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f)(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2)(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.